

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHAEL JONES)	
Claimant)	
V.)	
)	
CENTENNIAL PROPERTY MANAGEMENT)	
Respondent)	Docket No. 1,071,471
AND)	
)	
ZURICH AMERICAN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) appealed the February 4, 2015, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Michael J. Haight of Overland Park, Kansas, appeared for claimant. Christopher J. McCurdy of Overland Park, Kansas, appeared for respondent.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the February 4, 2015, preliminary hearing and exhibits thereto; and all pleadings contained in the administrative file.

ISSUES

The ALJ found claimant proved by a preponderance of the evidence that he sustained a neck sprain/strain as the result of his February 28, 2014, accident and ordered respondent to provide claimant a physician to evaluate and treat claimant's left-sided neck sprain/strain. Respondent appeals, arguing the weight of the credible evidence does not support claimant's allegation of a cervical injury. Claimant asks the Board to modify the preliminary hearing Order to allow for a full and proper evaluation of claimant's cervical injury, including all reasonable and necessary testing recommended by the treating physician.

The issues are:

1. Did claimant sustain a neck/cervical injury by accident arising out of and in the course of his employment with respondent?

2. If so, does the Board have jurisdiction to modify the medical treatment ordered by the ALJ?

FINDINGS OF FACT

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Claimant worked for respondent performing grounds keeping, maintenance and repairs. On February 28, 2014, claimant disposed of a long wooden streetlight in a dumpster. He grabbed the streetlight with his left arm, attempted to rotate it and his left arm, shoulder and left side of his neck popped loudly. Claimant indicated he felt immediate intense pain in his left shoulder into the left side of his neck area and numbness from the fingers on his left hand up into his neck area. According to claimant, on the day of his accident, he was sent to Shawnee Mission Urgent Care and reported his symptoms.

Claimant eventually received treatment for his left shoulder from Dr. Daniel J. Stechschulte, Jr. On April 30, 2014, Dr. Stechschulte performed left rotator cuff surgery. Claimant testified that between the date of accident and surgery, his symptoms of numbness and pain in the left shoulder into the neck area remained the same. He indicated he would sit with his head tilted to the right to avoid pain.

Following surgery, claimant had extensive physical therapy. He indicated that during the time period he received physical therapy, he had pain going into his neck and numbness. He indicated he had headaches from the back to the front of his head and numbness in the fourth and fifth digits of his left hand. According to claimant, he described his symptoms to Dr. Stechschulte, whom he saw between six and eight times. Claimant confirmed the doctor never recommended a cervical spine evaluation. Claimant indicated he also reported his symptoms to his physical therapists. He acknowledged never receiving treatment for his neck or head symptoms.

The records of ARC Physical Therapy+ (ARC), Dr. Stechschulte and Select Physical Therapy (Select) were placed into evidence. On April 4, 2014, claimant reported numbness/tingling in his fourth and fifth digits to a physical therapist at ARC. On October 16, 2014, claimant reported tingling in his fourth and fifth digits to Dr. Stechschulte. Claimant made the same report concerning his left fourth and fifth digits to a physical therapist at Select on September 18 and 25, 2014. On October 15, 16 and 27, 2014, claimant told Select of having numbness in his left fourth and fifth digits and pain into his neck. March 6, 2014, notes from ARC indicate claimant reported having constant numbness/tingling in the right fourth and fifth digits. On July 28, 2014, claimant reported to Select of having numbness in his left hand and a stabbing pain from his shoulder toward his fifth digit. He also mentioned to Select of having pain in his neck on June 6, August 26, September 2 and October 27, 2014.

On December 12, 2014, at the request of his attorney, claimant was evaluated by Dr. Michael J. Poppa, who is board certified in occupational medicine. Dr. Poppa's report indicated claimant made the following neck complaints:

"With turning my neck it hurts and is stiff." "Cold makes it hurt worse." "I can't look up or to the side for very long, about maybe a minute before it starts to hurt." "My head tilts to the side when I am sitting." "I also have some popping and cracking in it too."¹

With regard to claimant's cervical spine, Dr. Poppa diagnosed claimant with a musculoligamentous sprain-strain/intervertebral disc injury with right upper extremity radiculitis versus a brachial plexus stretch injury with ulnar neuropathy. Dr. Poppa opined claimant's work injury involving his left shoulder occurred as a result of significant stretching/trauma, which likely caused his cervical symptoms. Dr. Poppa opined claimant's February 28, 2014, work injury was the prevailing factor causing his injury, medical treatment and disability. The doctor noted claimant's mechanism of injury was consistent for his cervical symptoms. Dr. Poppa recommended an EMG/NCS of claimant's cervical spine and left upper extremity as well as an MRI scan of the cervical spine. The doctor indicated claimant's physical examination was consistent with his diagnoses and additional medical treatment will be necessary.

PRINCIPLES OF LAW AND ANALYSIS

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.² "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act."³

Respondent asserts claimant's allegation of a cervical spine injury is not supported by the weight of the credible evidence. This Board Member disagrees and affirms the preliminary hearing Order. Claimant testified that when he was initially injured, he experienced pain in his neck. He indicated he reported this to his physical therapists, Shawnee Mission Urgent Care and Dr. Stechschulte. Notes from Select corroborate claimant's testimony.

¹ P.H. Trans., Cl. Ex. 1 at 4.

² K.S.A. 2013 Supp. 44-501b(c).

³ K.S.A. 2013 Supp. 44-508(h).

Dr. Poppa's uncontroverted opinion is that claimant sustained a work-related cervical injury. Respondent argues Dr. Poppa's opinions should be discounted, as he is claimant's expert and examined claimant only once. Uncontroverted evidence that is not improbable or unreasonable cannot be disregarded unless it is shown to be untrustworthy, and is ordinarily regarded as conclusive.⁴ This Board Member finds insufficient evidence was presented by respondent that Dr. Poppa's opinions are improbable, unreasonable or untrustworthy. This Board Member concludes claimant proved by a preponderance of the evidence that he sustained a cervical injury by accident arising out of and in the course of his employment with respondent.

Claimant asks the Board to modify the preliminary hearing Order to allow for a full and proper evaluation of claimant's cervical injury. The Board has limited authority and jurisdiction when reviewing findings from preliminary hearings. The disputed issue must be one of those specifically set forth in K.S.A. 2013 Supp. 44-534a or the ALJ must have exceeded his jurisdiction as required by K.S.A. 2013 Supp. 44-551. The issue raised by claimant is not one of those specifically set forth in K.S.A. 2013 Supp. 44-534a(a). The ALJ has authority under K.S.A. 2013 Supp. 44-534a(a)(2) to make a preliminary award of medical compensation and temporary total disability compensation. The ALJ did not exceed his authority in limiting claimant's medical treatment. Accordingly, the Board lacks jurisdiction to address this issue. The undersigned Board Member dismisses the issue raised by claimant on appeal for lack of jurisdiction.

By statute the above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.⁵ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁶

WHEREFORE, the undersigned Board Member affirms the February 4, 2015, preliminary hearing Order entered by ALJ Hursh.

IT IS SO ORDERED.

⁴ *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

⁵ K.S.A. 2013 Supp. 44-534a.

⁶ K.S.A. 2013 Supp. 44-555c(j).

Dated this ____ day of April, 2015.

HONORABLE THOMAS D. ARNHOLD
BOARD MEMBER

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Honorable Kenneth J. Hursh, Administrative Law Judge